IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 76 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 Yes
2 to 5 No

COMMISSIONER OF INCOME-TAX

Versus

ANIL STARCH PRODUCTS LTD.

Appearance:
MR AKIL QURESHI for MR MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 05/09/2000

ORAL JUDGEMENT

(Per A.R. Dave, J.)

At the instance of the revenue and the assessee the following 4 questions have been referred to this court for its opinion by the Income Tax Appellate Tribunal, Ahmedabad Bench 'B' under the provisions of sec. 256(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

The questions which have been referred at the instance of the revenue as under:-

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal has been right in law in holding that reimbursement of medical expenses to the Managing Director is not a perquisite disallowable for the purposes of section 40(c) of the Income-tax Act, 1961?

2. Whether, on the facts and in the circumstances of the c ase, the Appellate Tribunal has been right in law in holding that premium paid for personal accident insurance to the Managing Director could not be taken for computation of disallowance under section 40(c) of the Income-tax Act, 1961?

3. Whether, on the facts and in the circumstances of the case, the Tribunal has not erred in law in holding that for the purpose of section 40A(5) the amount of cash payment of house rent allowance amounting to Rs. 53,059/- paid to the employees did not form part of the salary?"

At the instance of the assessee, the following question has been referred :

"Whether, on the facts and in the circumstances of the case, the expenditure of Rs. 1,00,000/was capital expenditure an allowable revenue expenditure?"

It has been submitted by learned advocate Shri Akil Qureshi appearing for the revenue that the first

question, which pertains to reimbursement of medical expenses to the Managing Director, is squarely covered against the assessee in the case of Gujarat Steel Tubes Ltd. v. CIT, 210 ITR 358. In the circumstances, the question is answered against the assessee and in favour of the revenue.

So far as the second question with regard to the payment of premium for personal accident insurance of the Managing Director of the assesssee is concerned, it has been decided by this court in the case of CIT v. Cama Motors Pvt. Ltd., 234 ITR 699 that when such a premium is paid by the assessee company, it is an admissible deduction. The said question has been answered in favour of the assessee in the said judgment and in the circumstances, we decide the said question in favour of the assessee and against the revenue.

So far as the third question with regard to cash payment of house rent allowance to the employees is concerned, the said question has been decided against the revenue and in favour of the assessee by the Hon'ble Supreme Court in the case of CIT v. Mafatlal Gangabhai & Co. (P) Ltd., 219 ITR 644. It has been held that the said payment is not covered by the provisions of sec. 40A(5) of the Act. In the circumstances, the said question is answered in favour of the assessee and against the revenue.

The facts giving rise to the question pertaining to the expenditure of Rs. 1,00,000/-, which has been raised at the instance of the assessee, are as under:

The assessee had placed an order for purchase of machinery and had paid certain amount in advance. The said order was subsequently cancelled and as a result thereof, the assessee had to incur expenditure of Rs. 1 lac by way of storage charges, interest etc. The said amount was claimed by the assessee as revenue expenditure and the Assessing Officer had disallowed the same. In appeal, the CIT (Appeals) decided that the said amount was paid so as to get rid of some onerous obligation and therefore it was treated as a capital expenditure. Appeal filed by the assessee before the Tribunal was dismissed. Such an issue has been decided by the Hon'ble Supreme Court in the case of Swadeshi Cotton Mills Co. Ltd. v. CIT, 63 ITR 65. The Hon'ble Supreme Court has held in the said case that when any expenditure is incurred by an assessee neither for the purpose of earning profits nor for the purpose of furthering, protecting or continuing its business which is to be

carried on from day to day, and when the expenditure is incurred with the object of avoiding an unnecessary investment in capital asset, the expenditure is in the nature of capital expenditure.

Looking to the ratio of the judgment delivered in the case of Swadeshi Cotton Mills (supra), we answer the said question against the assessee and in favour of the revenue.

Thus, question No. 1, which has been referred to us at the instance of the revenue is answered in favour of the revenue and against the assessee. The second and the third questions, which have been referred to us at the instance of the revenue are answered in favour of the assessee and against the revenue.

The question which has been referred to us at the instance of the assessee is answered against the assessee and in favour of the revenue.

The reference thus stands disposed of with no order as to costs.

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(D.M. Dharmadhikari, C.J.)

(A.R. Dave, J.)

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